IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 6591 of 2007(S)

AGAINST THE ORDER IN CMP.NO.164/2005 IN MC.NO.25/2002 OF THE FAMILY COURT, ALAPPUZHA

PETITIONER:

JOY VARGHESE, AGED 46 YEARS,
S/O.VARGHESE, PANALIL PADEETTATHIL VEEDU,
MURIKKUM MOODU, CHERAVALLY MURI, KAYAMKULAM.

BY ADV. SMT.DAISY A.PHILIPOSE

RESPONDENTS:
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1. LEELAMMA, AGED 38 YEARS, D/O.PONNAMMA,
PANAMOOTTIL KIZHAKKETHIL, ERUVA MURI,
PATHIYOOR VILLAGE, KAYAMKULAM.

2. DOBERA, AGED 7 YEARS, REPRESENTED BY
HER MOTHER LEELAMMA, PANAMOOTTIL KIZHAKKETHIL
ERUVA MURI, PATHIYOOR VILLAGE, KAYAMKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

W.P.(C). NO. 6591 OF 2007 S

Dated this the 27th day of February,2007

JUDGMENT

Sankaran, J.

The petitioner was the respondent in M.C.No.25 of 2002 on the file of the Court of the Judicial First Class Magistrate, Kayamkulam, filed by the respondents herein claiming maintenance under Section 125 of the Code of Criminal Procedure. The first respondent claimed to be the wife of the petitioner and the second respondent claimed to be the daughter of the petitioner. M.C.No.25 of 2002 was compromised between the parties and Ext.P5 order was passed by the Judicial First Class Magistrate, Kayamkulam. As per the terms of the compromise, the petitioner herein agreed to pay a sum of Rs.200/- per month to the second respondent herein as maintenance. The first respondent had abandoned her claim for maintenance.

2. Ext.P6 application was filed by the respondents herein under Section 127 of the Code of

Criminal Procedure claiming enhancement of maintenance to the second respondent at the rate of Rs.800/- per month. The petitioner herein filed Ext.P7 application under Section 127 of the Code of Criminal Procedure stating that the Family Court should decide first whether the second respondent is entitled to claim maintenance and for that purpose the paternity of the second respondent is to be established. Nowhere in Ext.P7 application, did the petitioner state that he is not the father of the second respondent. On the other hand, in the counter statement in M.C.No.25 of 2002 filed under Section 125 of the Code of Criminal Procedure, the petitioner had admitted in clear terms that the second respondent is his daughter. The prayer made by the petitioner to question the paternity and to reopen the evidence in M.C.No.25 of 2002 was rejected by the Family Court as per Ext.P9 order which is under challenge in this Writ Petition.

3. Section 125 of the Code of Criminal Procedure enables the wife or legitimate or illegitimate minor

child to claim maintenance. After enquiry, an order is to be passed in the proceedings under Section 125 of the Code of Criminal Procedure. In this case, the matter was compromised and it was agreed by the petitioner that the second respondent being his daughter is entitled to claim maintenance at the rate of Rs.200/- per month. In view of the compromise and in view of the admission of paternity, there was no scope for any enquiry as regards paternity in the proceedings under Section 125 of the Code of Criminal Procedure. The order under Section 125 of the Code of Criminal Procedure, passed on the basis of the compromise petition, has become final and conclusive. Sub-section (1) of Section 127 of the Code of Criminal Procedure provides that on proof of change in the circumstances of any person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same Section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such

alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be. Sub-section (2) of Section 127 provides for cancelling or varying the order under Section 125, in consequence of any decision of a competent civil court. Sub-section (3) provides for cancellation of the order in case of remarriage of the divorced woman or on payment of the whole of the sum payable to the divorced woman under any customary or personal law applicable to the parties or on surrender of the rights to maintenance. Section 127 does not enable a party to raise new contentions to defeat the findings already rendered in a proceeding under Section 125. The scope of enquiry under Section 127 does not entitle a party to re-agitate certain claims or contentions which have already become final. Maintenance could be awarded to the wife, child, father or mother. The second respondent would not have been entitled to get an order for maintenance under Section 125 of the Code of Criminal Procedure unless he is the child of the petitioner. The petitioner having agreed, by way of

compromise, to pay maintenance to the second respondent and the court having passed an order under Section 125 of the Code of Criminal Procedure, the petitioner cannot be heard to contend, in a proceeding under Section 127 of the Code of Criminal Procedure filed by the child, that she is not the daughter of the petitioner. Sub-section (1) of Section 127 of the Code of Criminal Procedure is intended only for "alteration" in the allowance for the maintenance on proof of change in the circumstances of the person receiving the maintenance or of the person ordered to pay maintenance. Sub-section (1) of Section 127 of the Code of Criminal Procedure does not contemplate cancellation of an order passed under Section 125 of the Code of Criminal Procedure. An order passed under Section 125 of the Code of Criminal Procedure could be cancelled or varied, only as provided in sub-sections (2) and (3) of Section 127 of the Code of Criminal Procedure. There is no case for the petitioner that sub-section (2) or sub-section (3) applies in the case. A contention which, if accepted, would have the effect

of cancelling the order under Section 125 of the Code of Criminal Procedure could not be entertained in defence to an application for enhancement of maintenance under Section 127 of the Code of Criminal Procedure. In the case on hand, the petitioner having admitted the paternity of the second respondent and a compromise having been entered into, he is not entitled to contend that the second respondent is not his child in the proceedings under Section 127 of the Code of Criminal Procedure. The Family Court was perfectly justified in dismissing the application filed by the petitioner.

The Writ Petition lacks merits and it is accordingly dismissed.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

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KURIAN JOSEPH&
K.T.SANKARAN, JJ.

W.P.(C)NO.6591 OF 2007

JUDGMENT

27th February, 2007